

# NABOB

National Association of  
Black Owned Broadcasters

February 24, 2017

The Honorable Ajit Pai  
Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington DC 20554

**Re: 2014 Quadrennial Regulatory Review, MB Docket Nos. 14-50, 09-182, 07-294  
and 04-256**

Dear Chairman Pai:

The National Association of Black Owned Broadcasters, Inc. ("NABOB") has reviewed the pending Petition for Reconsideration filed by the National Association of Broadcasters, Inc.<sup>1</sup> and provides its comments on that petition. NABOB submits that reconsideration of two issues raised in that petition is appropriate.<sup>2</sup> Specifically, NABOB supports: (1) the NAB's request for reconsideration and elimination of the Commission's newspaper-radio cross ownership rule, and (2) reconsideration of the Commission's decision not to explore creation of an incubator program.

Through the long history of the Commission's quadrennial review proceedings, NABOB has opposed any relaxation of the Commission's ownership rules. In our Comments in this proceeding NABOB stated:

In each of the Commission's previous quadrennial reviews, NABOB has opposed the relaxation of any of the Commission's rules, and that is NABOB's position with respect to the current quadrennial review. The ownership of broadcast radio and television stations has been in steady decline ever since: (1) Congress repealed the minority tax certificate policy in 1995, (2) the Supreme Court decided the *Adarand* case in 1995, and (3) Congress passed the

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<sup>1</sup> NAB Petition for Reconsideration, filed December 1, 2016.

<sup>2</sup> NABOB has joined with the Minority Media Telecommunications and Internet Council ("MMTC") in an appeal of the Commission's Second Report and Order. *MMTC and NABOB v. FCC*, Case No. 16-1398, United States Court of Appeals for the DC Circuit, filed November 15, 2016. NABOB and MMTC have supported review of that decision and have opposed the effort by the General Counsel's office to have it returned for further consideration by the Commission. Nothing herein is intended to contradict our position with respect to that appeal.

Telecommunications Act of 1996. The repeal of the tax certificate and the *Adarand* decision resulted in the Commission having no meaningful programs to promote minority ownership -- a condition that has now existed for 19 years. In addition, the passage of the Telecommunications Act of 1996 allowed a massive consolidation of ownership of broadcast facilities into a number of large companies. As a result of that massive consolidation, the number of television stations owned by African Americans now is down from 20 to 4. There has also been a decline in African American radio station ownership, but it has not been quite as dramatic as the television ownership decline.<sup>3</sup>

NABOB added:

In spite of this history of decline following the 1996 relaxation of the Commission's ownership rules, the Commission reiterates over and over again in the FNPRM that there is no "evidence" that further relaxation of certain of its ownership rules will negatively affect ownership of broadcast stations by minorities. NABOB submits that the serious decline in African American ownership since 1996 is the principal evidence the Commission needs. It is clear that three things caused the decline in media ownership, the loss of the tax certificate, the *Adarand* decision, and the relaxation of media ownership rules in 1996. The Commission only has a direct control over one of those factors - its media ownership rules. It cannot allow the decline of media ownership by African Americans to continue by throwing up its hand and blaming the Supreme Court or Congress.<sup>4</sup>

However, as you pointed out in your dissenting statement in this proceeding:

In the many years in which the 2010 Quadrennial Review has been pending, the Commission has approved the \$13.8 billion purchase by our nation's largest cable operator (Comcast) of one of our nation's top four broadcast networks (NBC). It has signed off on the \$49 billion merger of our nation's second and fifth largest multichannel video programming distributors (AT&T and DIRECTV). And it has blessed a single \$79 billion transaction combining our nation's second, third, and sixth largest cable providers (Charter, Time Warner Cable, and Bright House).<sup>5</sup>

NABOB's members, like NAB's members, must now compete for audience and advertising revenues against these new behemoths of the television industry. Similarly, NABOB's members, like NAB's members, must compete against the new internet giants, such

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<sup>3</sup> NABOB Comments, filed August 6, 2014 at ii.

<sup>4</sup> *Id.*

<sup>5</sup> 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 (Second Report and Order), 31 FCC Rcd 9864 (2016), Dissenting Statement of Commissioner Ajit Pai at 13.



as Google and Facebook, for audience and advertising revenues. Given this new competitive landscape, NABOB must acknowledge that consolidation within the television and radio industry is not our only competitive threat. Moreover, if the broadcast industry is too tightly constrained in its ability to compete against these new players, the industry as a whole, both large and small broadcasters, may suffer.

NABOB therefore submits that a reevaluation of its position in this proceeding is appropriate. In its Petition for Reconsideration, the NAB highlights the newspaper-radio cross ownership rule as one that has outlived its usefulness given the dire competitive financial position in which many newspapers now find themselves.<sup>6</sup> Notably, the National Newspaper Publishers Association, which represents more than 200 African American owned media companies, has filed a letter with the Commission supporting elimination of that rule.<sup>7</sup> Given the support that elimination of this rule has received, NABOB now supports repeal of that rule.

In conjunction with the repeal of the newspaper-radio ownership rule, however, the Commission must take action to promote ownership of broadcast properties by minorities. As NABOB pointed out in its Comments, in the *Prometheus* decision, the Third Circuit Court of Appeals placed the Commission under a continuing obligation to determine what impact repeal of any of its ownership rules will have on minority ownership, and to take action to remedy the loss of diversity of ownership that has occurred in recent years.<sup>8</sup> As NABOB has pointed out, re-instatement of the tax certificate must be done by Congress, it is not within the Commission's authority. While creation of the studies required to respond to the *Adarand* decision is within the Commission's authority, the Commission has shown no willingness to develop such studies. Should the Commission decide to undertake the required studies, NABOB would applaud such an effort. Given the lack of demonstrated interest in pursuing those studies, NABOB asks the Commission to reconsider its decision regarding creation of an incubator program to promote minority ownership.

NABOB proposed the creation of an incubator program more than two decades ago, but has not pressed the proposal recently because of concern that the joint sales agreements ("JSAs") and shared services agreements ("SSAs") utilized by some broadcasters might be offered up as the model for such an incubator program. Many of the JSAs and SSAs permitted by the Commission over the past decade have provided no opportunity for actual minority ownership. In many of those arrangements, the minority licensee has relied almost completely upon the group station owner for, financing, programming, advertising and operations, and the group owner has had an option, that lasted as long as 30 years, to purchase the minority licensee's station at a price that did not appreciate over that 30 year period. This is not an incubator program.

While NABOB has seen a number of things that would not work well as an incubator program, the exact outline of an incubator program that might be productive has not been fully

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<sup>6</sup> NAB Petition at 14-16.

<sup>7</sup> National Newspaper Publishers Association Letter, filed February 13, 2017.

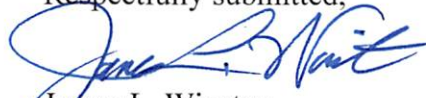
<sup>8</sup> NABOB Comments at 9-13.

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developed on the record. Therefore, NABOB requests that the Commission issue a further notice of proposed rulemaking and request public comment on a possible incubator program.

NABOB concludes, therefore, that given the significant changes in the industry that have taken place in recent years, reconsideration of the decision to maintain the newspaper-radio cross ownership rule, and reconsideration of creating an incubator is appropriate.

Respectfully submitted,



James L. Winston  
President

cc: The Honorable Mignon Clyburn,  
The Honorable Michael O'Rielly